



**China Jiangxi International Ltd & another v Senema t/a Senema Africa Auctioneers  
(Civil Appeal E134 of 2023) [2026] KEHC 683 (KLR) (26 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 683 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
CIVIL APPEAL E134 OF 2023  
DKN MAGARE, J  
JANUARY 26, 2026**

**BETWEEN**

**CHINA JIANGXI INTERNATIONAL LTD ..... 1<sup>ST</sup> APPELLANT**

**STEPHEN DOMINIC OMOLLO ..... 2<sup>ND</sup> APPELLANT**

**AND**

**DAVID SENEMA T/A SENEMA AFRICA AUCTIONEERS ..... RESPONDENT**

**JUDGMENT**

1. This Appeal arises from the Ruling and Order of the lower court delivered on 30.10.2023 by Hon. P.K. Mutai, Principal Magistrate in Kisii CMC Misc Application No. E003 of 2023.
2. The Memorandum of Appeal dated 15.11.2023 raised the following grounds of appeal:
  - i. The same court had set aside an ex parte judgment in Kisii CMCC No. 927 of 2019 unconditionally.
  - ii. The aforesaid ex parte judgment and the proceedings in the above-stated case were procured illegally, hence the same were set aside.
  - iii. The auctioneer/Applicant should have followed the instructions of the instructing party to pay his costs and not the Appellants.
3. The appeal is mixed up as it appears to be an appeal from two decisions, that is, the one dated 30.10.2023 and 16.1.2023. The court treats this as an appeal from the later decision in view of the provisions of section 79G of the *Civil Procedure Act*, which provides as follows:

Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period



any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order

4. Impugned Ruling delivered on 30.10.2023 was in respect of the Respondent's Application dated 5.7.2023 seeking review of the court orders issued on 3.7.2023.
5. The application was to the effect that:
  - i. spent
  - ii. spent
  - iii. Upon hearing the application inter partes, the Honorable Court be pleased to review the orders issued on 4.07.2023, set aside the same and allow the auctioneers' application to be canvassed by way of written submissions.
  - iv. Costs be provided for.
6. They stated that the court delivered the ruling on the basis that the application was not opposed when this was not the case. They stated that even if the auctioneers were to be paid, it is not the matter to pay. As such, it was unjust to condemn them unheard.
7. They annexed grounds dated 2.3.2023. A replying affidavit was filed, sworn on 4.08.2023, to the effect that he sought a bill to be taxed. He effected service on the advocates on record. The said advocates failed to attend court on 8.3.2023. without a plausible reason.
8. A mention date was given on 22,5.2023, which was duly served. The court set a date for ruling after confirming that submissions had been filed. He stated that the appellant was economical with the truth since the same week issued on the mentioned date of 8.3.2023. He stated that the ruling was delivered on 3.7.2023 and not 4.7.2023. This was to show that the order to be set aside did not exist. He termed the application an abuse of the court process.
9. The proceedings, however, do not have a record of the delivery of the ruling of 3.7.2023 or 4.7.2023. The ruling is due on 28.06.2023. The next appearance is on 14.07.2023 for a stay. The ruling of 3.6.2023 is anticipated to have been delivered in the presence of the parties. There is, however, no coram on the proceedings.
10. The originating application was to the dated 16.1.2023 effect that:
  1. The court be pleased to assess the annexed bill of costs
  2. Consequently, to pray 1, the court be pleased to issue a certificate of taxation in respect of the auctioneer's bill of costs
  3. Consequently, to prayer 2, the court be pleased to enter judgment for the certificate of taxation
  4. Costs are to be borne by the Respondents.
11. The ground of review was that the court proceeded by mistake that the Application was unopposed, yet the Appellant had filed grounds of opposition. The court has perused the file and noted that the grounds of objections are on record. The application was not opposed. The court called for the file and pursued the same and confirmed that the order giving rise to the execution was set aside, unconditionally.



## Analysis

12. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. However, the court cannot unnecessarily interfere with the judicial discretion of an inferior court unless it is satisfied that its decision is clearly wrong. In the case of *Mbogo and Another vs. Shah* [1968] EA 93, the Court stated:

“...that this Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”

13. However, documents still speak for themselves. The observation of documents is the same as the lower court as parties cannot read into those documents matters extrinsic to them. In the case of *Peters vs Sunday Post Limited* [1958] EA 424, the court therein rendered itself as follows:-

“It is a strong thing for an appellate court to differ from the findings on a question of fact, of the judge who had the advantage of seeing and hearing the witnesses...But the jurisdiction to review the evidence should be exercised with caution: it is not enough that the appellate court might have come to a different conclusion...”

14. It must be remembered that the matter proceeded by way of affidavit evidence. In a scenario where only documents are used, the court must refer to what is written rather than oral evidence. In *Fidelity & Commercial Bank Ltd V Kenya Grange Vehicle Industries Ltd* (2017) eKLR, the Court of Appeal, Ouko, Kiage and Murgor JJA held as doth:-

“Courts adopt the objective theory of contract interpretation and profess to have an overriding view sometimes called the Four Corners of an Instrument, which insists that a document’s meaning should be derived from the document itself, without reference to anything outside of the document, extrinsic evidence.

15. There is, however, wider latitude when it comes to affidavit evidence or where the court did not hear witnesses. In the case of *Sugut v Jemutai & 3 others* (Civil Appeal 110 of 2018) [2023] KECA 202 (KLR) (17 February 2023) (Judgment) Neutral citation: [2023] KECA 202 (KLR) Kiage JA stated as doth: -

“I have carefully considered those rival submissions by counsel in light of the record and the bundles of authorities placed before us. I have done so mindful of our role as a first appellate court to proceed by way of re-hearing and to subject the entire evidence to a fresh and exhaustive re-evaluation so as to arrive at our own independent conclusions. See Rule 29(1) of the Court of Appeal Rules 2010; *Selle Vs Associated Motor Boat Co* [1968] EA 123). I do accord due respect to the factual findings of the trial court out of an appreciation that it had the advantage, which we do not, of having seen and heard the witnesses as they testified. I am, however, not bound to accept any such findings if it appears that the judge failed to take any particular circumstance into account or they were based on no evidence or were otherwise plainly wrong. I note from the record before us that the learned Judge may not have been in a fully advantageous position in that regard having taken up the case



when it was already half-way heard. Her conclusions on the evidence and findings of fact were therefore from a reading of what was recorded by the previous judge.”

16. However, the ruling itself shows when it was delivered, but there is no record of the delivery. There is also no record to show the change of that date from 28.6.2023 to either 3.7.2023 or 4.7.2023.
17. Nevertheless, I find within the ruling that the court referred to the grounds of opposition. It is not true that the court indicated that the bill of costs was unopposed. The court set out the grounds in full. Only two errors were noted on the file. failure to indicate delivery of the ruling. It is not enough to indicate in the ruling itself. There has to be coram in the proceedings.
18. Secondly, the parties became aware that the main decree in CMC 927 of 2019 was set aside without indication on who is to bear costs in respect of the aborted sale. I will not go into addressing what happens in such a case, but suffice to say, an order on who is liable must be given. None was given in the circumstances.
19. Lastly the court proceeded on mention dates to issue substantial directions on how to proceed. In the absence of the appellant, the court had only one task, to fix the matter for hearing or directions. It cannot issue substantive orders on a mention date.
20. The matter was mentioned on 8.3.2023. If orders were issued, they were in vacuo. There is no evidence of those orders being served, other than the next mention date. The respondent deliberately misled the court to issue substantive orders on a mention date.
21. The respondent misled the court that the matter was for hearing when it was not. Such a misleading made the court issue substantive orders on a mention date, that is directions on filing of submissions. These were never served. In the absence of the other party, the recourse is to fix the matter for hearing. In the case of Paul Odhiambo Ogunde v Maersk Kenya Limited [2016] eKLR, the court held as doth:

A related issue is whether it is in order to enter default judgment on a mention date. It is settled in law that substantive orders are not to be granted on the date a matter comes up for mention (see Rahab Wanjiru Evans v Esso Kenya Limited (Civil Appeal No 13 of 1999) and Kenya Commercial Bank Limited v Naphtaly J.B. Hawala (Civil Application No 240 of 1997)). In light of this jurisprudence, it seems to me that it is not open for the Court to make substantive orders on a mention date. This is mainly because parties do not have an opportunity to make substantive submissions on a mention date and orders thus made could well occasion an injustice.”

22. A court properly informed on the status of a case cannot issue a substantive order on a mention date. In the case of Anthony Milimu Lubulellah, Advocates v Patrick Mukiri Kabundu & 3 others [2019] eKLR the court posited as follows:

.....In Rahab Wanjiku v Esso Kenya Limited [1995-1998 EA 332 this court stated:

“ We have no doubt that where a matter is fixed for mention, as it was in this case, the learned judge had no business determining on the date, the substantive issues in the matter. He can only do so, which was not the case here, if the parties so agree and of course, after having complied with the elementary procedure of hearing what submissions counsel may wish to make on behalf of the parties, which he did not do and moreover, gave no good reasons for adopting such a procedure which is repugnant to the administration of justice. As regards whether the learned judge erred in invoking his inherent jurisdiction under section 3A of the



Civil Procedure Act, which has been described by Hancox, JA as he then was, in *Wanguku v Kani* [1982-1988] 1 KAR 780 at 785 as “residual jurisdiction which should only be exercised in special circumstances... in order to put right that which would otherwise be a clear injustice” the learned judge gave the following reason for taking this course:

“This is because business premises which (sic) are closed awaiting the hearing of the application and the case.” With respect, there is nothing special about this state of affairs, neither does it entitle the learned judge to ignore basic requirements such as those demand by the principles of natural justice, in determining substantive issues in contention between opposing parties without their consent on a mention date. Having regard to the wording of section 3A, the unsolicited action taken by the learned judge could, ironically, be seen to have been the type of injustice which section 3A itself, was intended to avoid or prevent.”

23. It is apparent that the proceedings of 8.3.2023 were in error. The court in the case of *Paul Mwaniki v National Hospital Insurance Fund Board of Management* [2020] eKLR, decides that what an error is an error or mistake apparent on the face of the record is one that is self-evident and does not require elaborate arguments to be established. The court stated as follows:
35. The Indian Supreme Court[8] made a pertinent observation that is it has to be kept in view that an error apparent on the face of record must be such an error, which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. In *Attorney General & O’rs v Boniface Byanyima*,[9] the court citing *Levi Outa v Uganda Transport Company*[10] held that the expression “mistake or error apparent on the face of record” refers to an evident error which does not require extraneous matter to show its incorrectness. It is an error so manifest and clear that no court would permit such an error to remain on the record. It may be an error of law, but law must be definite and capable of ascertainment.”
36. There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by ‘error apparent’. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected. A review lies only for patent error where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.[11]
37. The term “mistake or error apparent” by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 45 Rule 1 of the Civil Procedure Rules and Section 80 of the Act. Put it differently an order, decision, or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.



24. A ruling obtained as in this case is a nullity. This is compounded by the lack of a delivery record. Lastly, it is not idle that the impugned judgment had already been set aside. However, the aspect of setting aside rose prominently in the appeal. The court called for a perusal of the primary file and noted to its satisfaction that the primary judgment was set aside for lack of service. The court cannot close its mind to illegalities that occur. proceedings on basis of set aside proceedings without having the court determine who is liable to pay is a nullity In *Macfoy vs. United Africa Co. Ltd* [1961] 3 All E.R. 1169, Lord Denning delivering the opinion of the Privy Council at page 1172 (1) said;

If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

1. It is noteworthy that the bill of costs related to the auctioneer’s charges in respect of the work done in execution of the decree resulting from Kisii CMCCC No. 927 of 2019. The Appellant alleged that the said judgment was set aside unconditionally. Secondly, in relation to auctioneers’ costs, the applicant, the auctioneer, needs the court to decide who is to pay. In this case, only the defendant in the lower court was made a party.

26. The Jurisdiction of this Court to grant review is well set out in the law. Section 80 of the [Civil Procedure Act](#) states that:

“Any person who considers himself aggrieved—

- (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit”.

Section 63 (e) of the [Civil Procedure Act](#) states that:

“In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed make such other interlocutory orders as may appear to the court to be just and convenient.

27. Order 45 of the Civil Procedure Rules provides for Review and it states as follows:

“(1) Any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any



other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review”

28. The rationale for the discretionary power of review is to find whether any evident error or omission needs correction or is otherwise a requisite for ends of justice. This power inheres in every court of plenary jurisdiction and is premised on preventing miscarriage of justice or an injustice. I associate myself with the reasoning of Kuloba J (as he then was) in *Lakesteel Supplies vs. Dr. Badia and Anor* Kisumu HCCC No. 191 of 1994 where he opined that:

“The exercise of review entails a judicial re-examination, that is to say, a reconsideration, and a second view or examination, and a consideration for purposes of correction of a decree or order on a former occasion. And one procures such examination and correction, alteration or reversal of a former position for any of the reasons set out above. The court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used in Order 44 rule 1, of the Civil Procedure Rules. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. It can only lie if one of the grounds is shown, one cannot elaborately go into evidence again and then reverse the decree or order as that would be acting without jurisdiction, and to be sitting in appeal. The object is not to enable a judge to rewrite a second judgement or ruling because the first one is wrong...On an application for review, the court is to see whether any evident error or omission needs correction or is otherwise a requisite for ends of justice. The power, which inheres in every court of plenary jurisdiction, is exercised to prevent miscarriage of justice or to correct grave and palpable errors. It is a discretionary power. In the present application it has not been said or even suggested that after the passing of the order sought to be reviewed, there is a discovery of new and important matter of evidence which, after the exercise of due diligence, was not within the applicant’s knowledge or could not be produced by him at the time when the ruling was made.”

29. The lower court had to review its ruling only to give effect to its intention and not to vary its intention due to the introduction of allegations of matters that were in the knowledge of a party but which were not raised during the proceedings. In this case, the matter proceeded, and directions were issued on the mention dates, without the directions being served. Although served with a mention notice, the court condemned the appellant for failing to file submissions, when no order was served regarding submissions.

30. Review is not to be taken lightly; it must only be for cases where the threshold for review is met. The Court of Appeal in *Mahinda vs. Kenya Power & Lighting Co. Ltd* [2005] 2 KLR 418 expressed itself as follows:

The Court has however, always refused invitations to review, vary or rescind its own decisions except so as to give effect to its intention at the time the decision was made for to depart from this would be a most dangerous course in that it would open the doors to all and



sundry to challenge the correctness of the decisions of the Court on the basis of arguments thought of long after the judgement or decision was delivered or made.”

31. The appellant was subject to a decree that was said aside. The court cannot shut its eyes to the fact that the primary decision was set aside. No amounts were recovered under the warrant of attachment. The proceedings in this matter are thus in vacuo. There was no basis to hold the appellant liable to pay in a decree that had been set aside unconstitutionally. The matter ought to have been set down for hearing. If the appellant failed to attend a hearing date, then adverse orders could be made. none could be made in the circumstances of this case.
32. The Court of Appeal, sitting in Malindi [Makhandia, Ouko & M’Inoti, JJ.A] in the case of James Kanyiita Nderitu & another v Marios Philotas Ghikas & another [2016] KECA 470 (KLR), posited as follows:

The former Court of Appeal for Eastern Africa, in *Ali Bin Khamis v. Salim Bin Khamis Kirobe & Others*, [1956] 1 EA 195 expressed the view that where an order is made without service upon a person who is affected by it, procedural cockups will not deter the court, *ex debito justitiae*, from setting aside such an order. Briggs, JA., with whom Worley P. and Sinclair, VP. concurred, stated thus:

“On the appeal before us Mr. Khanna relied on *Craig v Kanseen* [1943] 1 All ER 108 as showing that where an order is improperly made without serving a person known to be affected by it and having a statutory right to be served before its can be made, the order is a nullity in the sense that it must be set aside *ex debito justitiae*, and that in cases of nullity procedure is unimportant, since the Court has inherent jurisdiction to set aside its own order. I accept these principles, as laid down by Lord Greene, MR.

33. Proceedings of this nature where a court proceeds on a mention date as if the order for submissions were served as a nullity and cannot survive. see *Macfoy vs. United Africa Co. Ltd* [supra].
34. In the case of *James Kanyiita Nderitu & another v Marios Philotas Ghikas & another* [supra] the court posited as follows:

In an irregular default judgment, on the other hand, judgment will have been entered against a defendant who has not been served or properly served with summons to enter appearance. In such a situation, the default judgment is set aside *ex debito justitiae*, as a matter of right. The court does not even have to be moved by a party once it comes to its notice that the judgment is irregular; it can set aside the default judgment on its own motion. In addition, the court will not venture into considerations of whether the intended defence raises triable issue or whether there has been inordinate delay in applying to set aside the irregular judgment. The reason why such judgment is set aside as of right, and not as a matter of discretion, is because the party against whom it is entered has been condemned without notice of the allegations against him or an opportunity to be heard in response to those allegations. The right to be heard before an adverse decision is taken against a person is fundamental and permeates our entire justice system. (See *Onyango Oloo v. Attorney General* [1986-1989] EA 456). The Supreme Court of India forcefully underlined the



importance of the right to be heard as follows in *Sangram Singh v. Election Tribunal, Kotah*, AIR 1955 SC 664, at 711:

“[T]here must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them.”

The approach of the courts where an irregular default judgment has been entered is demonstrated the following cases. In *Frigonken Ltd v. Value Pak Food Ltd*, HCCC NO. 424 of 2010, the High Court expressed itself thus:

“If there is no proper or any service of summons to enter appearance to the suit, the resulting default judgment is an irregular judgment liable to be set aside by the court *ex debito justitiae*. Such a judgment is not set a side in the exercise of discretion but as a matter of judicial duty in order to uphold the integrity of the judicial process.”

Earlier in *Kabutha v. Mucheru*, HCCC No. 82 of 2002 (Nakuru) Musinga, J. (as he then was) had expressed the principle thus:

“[W]ith respect to the trial magistrate, she had no discretion to exercise in the circumstances of the case since there was no service at all and as earlier said, the default judgment had to be set aside as a matter of right. Discretion would have arisen if service was proper and there had been for example delay in entering appearance. Where there is no service of summons to enter appearance, an applicant does not have to show that he has an arguable defence so as to persuade the court to set aside an *ex parte* judgment. In such circumstances, the court is under a duty to remedy the situation and uphold the integrity of the judicial process.

35. Once a matter has been set aside unconditionally, it is irrelevant that there were warrants in place. The auctioneer must seek the court’s decision on who is to pay in the circumstances. The court erred in failing to set aside the taxation.
36. The issue of costs is governed by Section 27 of the *Civil Procedure Act*, which provides as follows:
  - (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.
  - (2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.
37. Costs are generally discretionary. However, the discretion is not arbitrary. The Court of Appeal in the case of *Farah Awad Gullet v CMC Motors Group Limited* [2018] KECA 158 (KLR) had this to say:

“It is our finding that the position in law if that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously



meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.

38. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of *Rai & 3 others v Rai & 4 others* [2014] KESC 31 (KLR), as follows:
18. It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation
  22. Although there is eminent good sense in the basic rule of costs - that costs follow the event- it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings - a position well illustrated by the considered opinions of this Court in other cases. The relevant question in this particular matter must be, whether or not the circumstances merit an award of costs to the Applicant.
39. The appeal is merited and is accordingly allowed. The appellants are entitled to costs. The costs of Ksh 45,000/= will suffice.

#### **Determination**

40. The upshot of the foregoing is that I make the following orders:
- a. The appeal is merited and is accordingly allowed. The application dated 5.7.2023 is hereby allowed. The ruling and order issued on 3.07.2023 is set aside together with all subsequent orders.
  - b. The application dated 16.1.2023 shall be listed for hearing afresh before a court other than Hon. P.K. Mutai.
  - c. The appellant shall have costs assessed at Ksh. 45,000/=.
  - d. 30 days stay of execution on costs.
  - e. File is closed.

**DELIVERED, DATED AND SIGNED AT NYERI, VIRTUALLY ON THIS 26<sup>TH</sup> DAY OF JANUARY, 2026. JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

In the presence of: -

Ms. Odera for the Appellant.

Court Assistant: Michael

